LABOUR DEPARTMENT

The 14th October, 1969.

No. 6505-A.S. O(E)-Lab-69 25046.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s

(i) The Karnal Co-operative Transport Society Ltd., Karnal.

(ii) The Karnal-Delhi Co-operative Transport Society Ltd., Karnal.

(iii) The New Karnal Co-operative Transport Society, Karnal.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 21 of 1968.

between

The workmen and the management of M/s—

(i) The Karnal Co-operative Transport Society Ltd., Karnal.

(ii) The Karnal-Delhi Co-operative Transport Society Ltd., Karnal.

(iii) The New Karnal Co-operative Transport Society Ltd., Karnal.

Present:—

Shri Madhu Sudan Saran Cowshish, for the workmen.

Shri M.L. Saini, for the management.

AWARD

The workmen of three Transport Societies known by the name of M/s (i) The Karnal Co-operative Transport Society Ltd., Karnal, (ii) The Karnal-Delhi Co-operative Transport Society Ltd., Karnal and (iii) The New Karnal Co-operative Transport Society Ltd., Karnal, demanded dearness allowance at the same rate at which it is being paid to the workmen of the Punjab Roadways. This demand of the workmen was not accepted by the management of the concerned societies and this gave rise to an industrial dispute. Accordingly, the President of India in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication, *vide* GOVERNMENT GAZETTE Notification No. ID/3919, dated 15th February, 1968 :—

> Whether the workmen should be granted dearness allowance as has been given to the Punjab Roadways employees on or after 1st May, 1967 ?

On receipt of the reference usual notices were issued to the parties by my learned predecessor Shri K.L. Gosain, in response to which a statement of claim was filed on behalf of the workmen and the management of the three Transport Societies filed separate written statement which are exactly similar. The claim of the workmen is opposed by the managements of all the three respondent societies. However, before they filed their written statement the Government issued a notification No. 5991, dated 5th March, 1968 by which the original notification was amended and the word "Haryana" was substituted for the word 'Punjab". A preliminary objection raised on behalf of the respondents is that the order of reference is bad because it has been made under Section 10(1)(d) of the Industrial Disputes Act while it should have been made under sub-section (5) of Section 10 of the said Act. As regards the merits of the case the workmen is that they all were originally employees of one society which was carrying on business in the name of M/s Karnal Co-operative Transport Society Ltd., Karnal. The governing body of the society adopted a resolution in a general meeting by which the society was split into three parts which are the respondents in this case. It is alleged that before splitting the workmen were assured that they would continue to enjoy all their rights and previleges notwithstanding the division. It is pleaded that prior to the dicision the parent society had entered into an agreement, dated 17th April, 1957 with the workmen. This agreement was operative for the period of 10 years from 1st April, 1957 to 31st March, 1967. Under clause 6 of this agreement the management had assured the workmen that even if the society is divided at any later stage all the assurances given to the workmen would be binding on the newly formed units. It was also agreed that the terms and conditions of service applicable at present to all categories of employees of Punjab Roadways and as may be notified from time to time by the Government would be applicable to the employees of the respondent societies and therefore in accordance with this agreement the parent society has been giving and implementing the terms and the award of dearness allowance etc., given to the Punjab Roadways employees from time to time. It is pleased that the Punjab Roadways have granted additional dearness allowance to their workmen but the respondent society have not honoured their commitment. According to the workmen they are entitled to additional dearness allowance with effect from 1st November, 1967 according to the scales allowed to the employees of the Punjab Roadways which are as under :—

Employees drawing basis pay	*Will get A.D.A.*
(i) Employees drawing basic pay upto 109 ..	65 A.D.A.
(ii) Employees drawing basic pay between Rs 110-149 ..	91 "
(iii) Employees draeing between Rs. 150—209 ..	114 "

Employees drawing basic pay	*Will get A. D. A.*
(iv) Employees drawing basic pay between Rs. 210—399	.. 137 A.D.A.
(v) Employees drawing basic pay between Rs. 400—449	.. 150 A.D.A.
(vi) Employees drawing basic pay between Rs 450—499	.. 153 A.D.A.
(vii) Employees drawing basic pay between Rs. 500—532	Amount by which basic pay plus D.A. falls short of Rs 652.00

Employee between 533 and above—as per letter, dated 11th May, 1967.

On behalf of the managements it is pleaded that the workmen are not entitled to additional dearness allowance which has been allowed to the employees of the Punjab Roadways on and after 1st May, 1967, because it is a well settled law of industrial adjudication that fixation of wages and dearness allowance must be done on Industry-cum-Region basis and for this purpose the Industrial Tribunal is bound to compare wages prevailing in similar concerns in the region with which it is dealing and generally speaking similar concerns would be those which are doing the same type of business as is being done by the concern with respect to which the dispute is under consideration. It is alleged that there are several other factors and considerations which should be identical in similar concerns while making the comparison and for this reason the respondent socieites cannot be compared with the Punjab Roadways which is evidently a much bigger and flourishing undertaking while the respondent societies are very small concerns struggling for their very existence because they have come into being only on 19th May, 1966, and have hardly completed one and an half years of business. It is pleaded that the respondent societies have yet to organise their business activities in entirely new circumstances and therefore comparison regarding wages and other essential considerations of industry-cum-region will have to be made with similar concerns in private sector in the same line of business and in the same region but having regard to the terms of reference no such comparison can be made with private sector. It is pleaded that an important and essential consideration for grant of enhanced rate of dearness allowance is the capacity to pay which is lacking in the case of the respondents. It is also pleaded that the Transport industry has no future because the Government have already declared their policy of complete nationalisation after the expiry of the agreement with regard to Fifty:Fifty scheme and thus there is no justification for placing any further financial burden on the respondent societies.

It is denied that any assurance was given to the workmen that they would be given enhanced dearness allowance which has been allowed to the employees of the Punjab Roadways between the period from1st March, 1967 to 1st November, 1967. It is further pleaded that the workmen are not entitled to invoke the terms of the settlement dated 17th April, 1957 for the purpose of the present reference because the said settlement ceased to exist, for all purpose and expired on 31st March, 1967, as has been held by this Tribunal *vide* order dated 10th November, 1967, in reference No. 67 of 1967, relating to gratuity scheme. It is urged that there is a misconception in the mind of the workmen that the benefits continue to flow out of the settlement dated 17th January, 1957, even after its expiry on 31st March, 1967, unless a new agreement is arrived at. It is pleaded that the workmen are only entitled to benefits accruing to them up to 31st March, 1967 in regard to the terms and conditions of service existing on 17th April, 1957, and to those modified subsequently till 31st March, 1967, but according to law the benefits allowed to the employees of the Punjab Roadways after 31st March, 1967 cannot be availed of by the employees of the respondent societies in terms of settlement dated 17th April, 1957 because it expired on 31st March, 1967. It is therefore, pleaded that the only basis for the determination of the demands of the workmen is Industry-cum-Region and for this purpose comparison is needed to be made with Punjab Roadways in regard to all essential considerations and factors on the principle of Industry-cum-Region. It is also pleaded that the wages drawn by the workmen of the respondent societies are much higher than those wages drawn by the workmen of compareable concerns in the region and further the respondent societies are paying much more than the statutory minimum wages fixed by the Government. The margin of profit is said to have gone down because of the substantial increase in prices of spare parts, diesel, chassis and body building etc. and therefore the respondent societies are unable to bear any additional burden.

My learned predecessor Shri K. L.Gosain framed the following issues which arose fromthe pleadings of the parties:—

1. Whether the order of reference is bad because it has been made under Section 10(1) (d) of the Industrial Disputes Act, 1947 but according to the management it should have been made under sub-section (5) of Section 10 of the Industrial Disputes Act, 1947 ?

2. What effect if any the notification of the Haryana Government No. 5991, dated 5th March, 1968 has got over the present case ?

3. Whether the workmen should be granted dearness allowance as has been given to the Punjab Roadways Employees on or after 1st May, 1967 ?

4. Whether the workmen should be granted dearness allowance as has been given to the Haryana Roadways Employees on or after 1st May, 1967?

The parties have produced evidence in support of their respective cases. I have heard their learned representatives at length and have gone through the record. My findings are as under:—

*Issue No.*1—A joint reference has been made with regard to the employees of the three respondent societies because the three societies in question were formed as a result of the devision of one society which was orignally carrying on the Transport business under the name of the Karnal Co-operative Transport Society Ltd. Karnal and all the workmen were originally employees of the parent society and it was agreed before the division that the right and privileges of the workmen would not be affected by the division. The parent society had entered into an agreement dated 17th April, 1957 with its workmen whereby it was agreed that the terms and conditions of service applicable at present to all category of employees of Punjab Roadways and as may be-modified from time to time by the Government would be applicable to the employees of the Karnal Co-operative Transport Society Ltd., Karnal. The claim of the workmen is based upon this agreement which according to them is binding on the three respondent societies because they are merely the successors of the parent society. In view of this position I am of the opinion that the reference made to this Tribunal under Section 10(1) (d) is in order and the provisions of sub-section (5) of section 10 do not apply to the present case. I find this issue in favour of the workmen,

Issue No. 2.—The workmen filed a writ petition challenging the validity of the notification No. 5991, dated 5th March, 1968, by which the notification referring the present dispute to this Tribunal was amended and the word (Haryana) was substituted for the word Punjab. This writ was accepted and the impugned notification dated 5th March, 1968, was quashed. This issue, therefore, does not require any decision.

Issue No. 3.—This issue also does not arise in view of the orders of the High Court accepting the Writ Petition and quashing the notification No. 5991, dated 5th March, 1968.

Issue No. 4.—This is the main issue in the case. The workmen do not desire that the question whether they are entitled to any increase of dearness allowance should be decided on industry-cum-region basis. From their point of view the question whether the respondent societies are in a position to bear the additional financial burden is also irrelevant. The stand taken up by the workmen is that on the basis of the settlement dated 17th April, 1957, which was arrived at between the workmen and the management of parent society they are entitled as of right to the dearness allowance at the rate at which it is being paid to the employees of the Punjab Roadways and if the dearness allowance paid to the employees of Punjab Roadways is increased the dearness allowance of the employees of the respondent societies would automatically be increased.

The workmen have produced seven witnesses in support of their case. Shri Jaswant Singh, A. W. 5 an Assistant Accountant of the Karnal Co-operative Transport Society Ltd. has produced the copy of the settlement relied upon by the workmen and which is marked Exhibit A. W. 5 1. The witness has stated that there is no office order of the management allowing any grades or scales of pay to their employees and their grades and scales are according to the grades and scales of pay of the employees of the Punjab Roadways. The witness has stateed that the terms of the agreement expired on 31st March, 1967. Shri Pushpinder Nath A. W. 4, a Clerk in the office of the Deputy Registrar, Co-operative Sicieties, Karnal, has produced copies of the resolutions No. 2 and 3 passed by the parent society on 6th December, 1965. By resolution No. 2, the parent society split itself into three societies which are respondents in this case. By resolution No. 3 it was decided that all the employees of the parent society although allotted to the three succeeding societies would continue to enjoy the same privileges which they were then getting and the conditions of their service would not be effected in any manner. Shri Sujan Singh Bedi A. W. 6 who is employees of M s. Karnal, Delhi Transport Co-operative Society Ltd. has produced a copy of the emorandum of settlement dated 30th April, 1965, which is marked Exhibit A.W. 6/1. The witness has stated that they are giving dearness allowance in accordance with the instructions contained in the Government letters copies of which Exhibit A. W. 6 2 to Exhibit A. W. 6 4. Shri Balwant Singh, Head Clerk-cum-Accountant, in the New Karnal Co-operative Transport Society Ltd. has also stated that the society has been paying dearness allowance and the salaries according to the grades at which the Karnal Co-operative Transport Society Ltd., Karnal, has been paying to their employees. On the basis of this evidence it is pleaded on behalf of the workmen that it is proved that they are entitled to dearness allowance at the rate at which it is being paid to the employees of the Punjab Roadways.

Shri Paramjit Singh A.W. 1 a Clerk in the office of the Provincial Transport Controller, Punjab, has been produced in order to prove the grades and scales of pay which are being given to the various categories of the workmen employed in the Punjab Roadways. The witness has stated that the grades and scales of various categories of the workmen of the Punjab Roadways with effect from 1st January, 1967, are detailed in the statement Exhibit A.W. 1/1 and the statement of *ad hoc* dearness allowance allowed to the workmen is Exhibit A.W. 1/2. The witness has also stated that further relief in the form of enhanced dearness allowance has been given to the workmen of the Punjab Roadways as detailed in the letter copy Exhibit A.W. 1/3. The witness has also proved the previous circulars marked Exhibit A. W. 1/4 to A.W. 1/8 in which the details of the relief given to the Government employees in the employment of the State Government from time to time are mentioned. Shri Amrit Lal A.W.2 an Assistant in the office of the Provincial Transport Controller, Haryana, has produced a statement giving the details of revised grades of pay of the employees of the Provincial Transport Controller. The details of the *ad hoc* dearness allowance which is admissible to these employees are mentioned in Exhibit A.W. 2/2 and Exhibit A.W. 2/3.

In view of the evidence produced by the workmen it is clear that if the terms of the settlement dated 17th April, 1957, continue to be binding upon the parties then the demand of the workmen is justified and they are entitled to get dearness allowance at the same rate at which it is being paid to the employees of the Punjab Roadways. However, we find that the settlement dated 17th April, 1957, was to remain inforce for a period of 10 years only and this period expired on 1st April, 1967. Under sub-section (2) of section 19 of the Industrial Disputes Act a settlement continues to be binding even after the expiry of the period mentioned therein until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement. The management of the three respondent societies in this case desired to terminate the settlement dated 17th April, 1957, and they duly gave a notice to their workmen intimating to them of their intention to terminate the settlement in question and this period of two months also expired in June, 1967. The position taken up by the workmen, however, is that notwithstanding the expiry of the period of the settlement dated 17th April, 1957, and the expiry of the period of two months from the date the notice was given the settlement continues to be binding on the parties till it is replaced by another settlement or an award of the competent Tribunal. In support of this contention reliance has been placed upon a number of authorities cited as 1964-I-LLJ-19, 34-FJR-35, 1961-I-LLJ-105, 1957-I-LLJ-620 and 1957-II-LLJ-256.

I have carefully gone through the authorities cited above and in my opinion all these authorities are distinguishable. All these authorities relate to the cases in which awards had been given. In 1964-I-LLJ page 19, South Indian Bank Ltd., and Chacko (AR), it has been held "that there is a difference between an award being in operation and an award being binding on the parties. Section 19(6) of the Industrial Disputes Act makes it clear that after the period of operation of an award has expired the award does not cease to be effective because it continues to be binding thereafter on the parties until notice has been given by one of the parties of the intetnion to terminate it and two months have lapsed from the date of such notice. The effect of section 4 of the Industrial Disputes (Banking Company) decision Act is that the award ceased to be inforce after 31st March, 1959, but that had nothing to do with the question as to the period for which it will remain binding on the parties thereafter. The provision of section 19(6) as regard the period for which the award shall continue to be binding on the parties is not in any way affected by section 4 of the Industrial Disputes (Banking Comoany) decision Act, 1965. Even otherwise if an award has ceased to be in operation or inforce and has ceased to be binding on the parties under the provisions of section 19(6), it will continue to have its affect as a contract between the parties that has been

made by industrial adjudication in place of the old contract. So long as the award remains in operation under Section 19(3), Section 23(C) stands in the way of any strike by the workmen or lock out by the employer in respect of any matter covered by the award. Again so long as the award is binding on a party, breach of any of its terms will make the party liable to penality under Section 29 of the Act to imprisonment which may extend to 6 months or with fine or with both. After the period of its operation and also the period for which the award is binding have lapsed, Section 23 and 29 can have no operation. There is nothing in the scheme of the Industrial Disputes Act to justify a conclusion that merely because these special provisions as regards prohibition of strike and lock outs and of penalties for breach of award cease to be effective, the new contract as embodied in the award should also cease to be effective. On the contrary the very purpose for which industrial adjudication have been given the peculiar authority and right of making new contract between employers and workmen makes it reasonable to think that even though the period of operation of the award and the period for which it remains binding on the parties in respect of both of which special provisions have been made under Section 23 and 29, respectively, may expire, the new contract would continue to govern the relations between the parties till it is replaced by another contract. Hence a benefit as per the terms of the award which has ceased to be operated or inforce under Section 19(6) of the Industrial Disputes Act, 1947 could be claimed on the basis that the provisions of such award would create a contract between the concerned parties.

In 1961-I-LLJ-105 workmen of New Elphinstone Theatre (South Indian Cinema employees Association and New Elphinstone Theatre which is an authority of the Madras Labour Court, it has been held that even after the award is terminated in the manner provided by Section 19(6) of the Industrial Disputes Act, the obligations created by the award could only be altered by a fresh contract or a fresh adjudication under the Industrial Disputes Act and not otherwise. It has been held that the Industrial Disputes Act has been enacted with the object of securing harmonious relations in the working of the industry between the employer and the employees by providing a machinery for adjudication of dispute between them and the object of the legislation would be frustrated, if after every few months by unilateral action the employer or the employees may be entitled to reopen the dispute and ignore the obligations declared to be binding by the process of adjudication. At page 119-II Col, bottom, it has been observed that clearly obligations under the award of a long standing nature continue. An authority of the Bombay High Court, Managal Dass, Naran Dass *versus* Payment of Wages Authority (1957-II-LLJ-256) was relied upon in which it has been had that "where an award is delivered by the Industrial Tribunal it has the effect of imposing a statutory contract governing the relations of the employer and the employees. The termination of the award by either party under Section 19(6) has not the effect of extinguishing the rights flowing there from. Evidently by the termination of the award, the contract of employment is not terminated. If the employment is not terminated, it is difficult to hold that the rights which had been granted under the award automatically cease to be effective from the date on which the notice of termination of award becomes effective. The effect of the termination of the award is only to prevent enforcement of the obligations under the award in the manner prescribed but the rights and obligations which flow from the award are not wiped out. The termination of the award of the lapsing of the award has not the effect of wiping out the liabilities showing under the award.

In 1957-I-LLJ-620, Yamuna Mills Company Ltd. and Majoor Mahanjan Mandal, Baroda and others, it has been held that the result of the award ceasing to have effect on notice of termination being given under Section 116(1) of the Bombay Industrial Relations Act is that the award ceases to exist. The result of the award ceasing to have effect is that it is open to either party to give a notice of change under S.42 of the Act and to attempt to bring about a change. Further it is open to the employer in cases in which he could bring about a change without a notice of change such as matters enumerated in Sch. III to the Act to bring about the change, because the impediment placed in his way by S. 46(3) is removed. But until a change is brought about by the Act either of employer or the employee after following the relevant provisions in the Bombay Industrial Relations Act, 1946, the award that exists, shall continue to regulate the relations between the employer and the employees. The effect of termination of an award is not that the rights which flow from that award cease to be available to the enmployees, but the effect of termination is that the award continues to govern the relations between the employer and the employees untill such time as a change is effected in accordance with the provisions of the Bombay Relations Act, 1946.

In 34-FJR-35, Amritsar Rayon and Silk Mills (Private) Ltd, *versus* Amritsar Textile Clerks Association and another, it has been held by the Punjab and Haryana High Court that even when an award has been terminated, it will continue to have effect as a contract between the parties so long as it is replaced by a fresh award. It has been held that the workmen would, however, be entitled to raise a fresh industrial dispute which could be adjudicated upon under Section 10(1) or under Section 12(5) of the Industrial Disputes Act, 1947. Therefore, even when an award has been terminated by notice, the workmen would not be entitled to raise an industrial dispute on the basis that the terms of the award so terminated have ceased to apply to them, and the appropriate Government would be justified in refusing to refer for adjudication any such dispute raised by the workmen. The perusal of the authorities discussed above shows that all the authorities relate to awards and not to settlements while in the present case it is a settlement which has come to an end and the management have given a not intimating to the workmen of their intention to terminate the settlement . Moreover the authorities referred it above simply lay down that after the period of the expiry of the award and the notice given by one of the parties to the other intimating their intention to terminate the award, the terms of the award continues to be binding between the parties as a term of contract. This simply means that the rights which they workmen have already acquired under the award cannot be taken away simply because the award has ceased to be operative. This proposition of law is not in dispute in this case because the rights or obligations already acquired under the award would naturally continue to be binding as a contract of service till rrplaced by another award or settlement but the question which requires determination in this case is whether the workmen can acquire fresh rights even after the expiry of the settlement. The learned representative of the management during the course of arguments conceded that the workmen are entitled to the grades and scales of pay and dearness allowance which was being given to the employees as on 30th June, 1967 because the terms of settlement, dated 17th April, 1957 were binding in the parties till that date but thereafter no new rights could be acquired by the workmen. In my opinion this submission is correct and the present case is wholly distinguishable because in the present case the dispute between the workmen and the management with regard to the rate at which dearness allowance should be paid to the workmen has been referred to this Tribunal for adjudication and this adjudication cannot be refused simply it has now dawned

upon the workmen that no adjudication is necessary and they are entitled to continue getting the grades and scales of pay and the dearness allowance at the rate at which it is being paid to the employees of the Punjab Roadways till the settlement, dated 17th April, 1957 is not replaced by another settlement or award.

The learned representative of the workmen in reply has submitted that the right of the workmen to receive increase dearness allowance at the rate at which it is being allowed to the employees of the Punjab Roadways can not be taken away simply because a reference about their right to receive increased dearness allowance has been made a subject matter of reference to an Industrial Tribunal. This contention of the learned representative of the workmen is technically correct but this proposition of law cannot also be denied that an industrial dispute with regard to dearness allowance which should be paid to workmen could be raised after the expiry of the period of settlement and such a dispute has been raised and duly referred to this Tribunal for adjudication in accordance with the law and t he Tribunal cannot refuse to adjudicate upon this dispute simply because the workmen now do not desire adjudication and claim that they are entitled as of right to receive the increased dearness allowance under the terms of settlement, dated 17th April, 1957. Since the period for which the settlement, dated 17th April, 1957 was arrived at has expired and the management have also given a two months notice intimating to the workmen of their desire to terminate the settlement, therefore, the reference of the industrial dispute raised at the instance of the workmen with regard to right to receive the increased dearness allownace after 30th June, 1967 has been re-opened and the whole matter is now open before this Tribunal and it has to decide as to what dearness allowance should be given to the workmen after taking into consideration all the circumstances.

The management have led evidence to prove that total emoluments of the workmen of the responden. societies are good and no further increase in the dearness allownace is justified. Shri Amarjit Singh M. W. 1 who is the manager of M/s. Karnal Co-operative Transport Society Ltd., Karnal has stated that apart from pay and dearness allowance which is being given to the workmen they are being given uniform allowance at the rate of Rs. 12-50 paise per month, Provident Fund contribution of the society is at the rate of 8 per cent, bonus is being paid to the workmen at the rate of one month's pay, night allowance is being given to them at the rate of Rs. 3/- per night and certain cash allowance is paid to the conductors and drivers according to the distance which they travel every day. The witness says that the grades of pay of the employees were revised with effect from 1st January, 1967 and they are being given yearly increment from Rs. 4/- to Rs. 10/- per month and they are also paid over time allowance as well in addition they are given Mela allowance. The witness has stated that they are running only 22 buses and the numbers of their workmen is 89 and the Government has not increased their mileage or fare. He has filed copies of the profit and loss account and the balance sheets which are marked Exhibit M. W. 1/1 and Exhibit M. W. 1/2 and has stated that the society is not in a position to bear any further financial burden. Shri Baij Nath M. W. 2, General Manager of M/s. Karnal Delhi Co-operative Transport Society, Ltd., Karnal has similarly given the details of the enoluments which are being given by his society to their workmen. The witness has stated that in addition to the pay they are also giving the benefit as detailed in the statement of Shri Amarjit Singh M.W. 1. The witness says that the conductors and drivers at an average area able to earn from Rs. 45 to Rs. 60 P.M. in addition to pay and dearness allowance etc. The witness says that they too have a total fleet only of 20 buses and the number of their workmen are 80. He has produced a calculation chart which has been prepared from the accounts books for the purpose of Payment of Bonus Act, 1965. The witness says that the expenses of the society have tremendously increased because of rise in prices of the spare parts and diesel etc. He says that the price of the tyres has increased by Rs. 200 and the price of the tubes has gone up from Rs. 54 to Rs.80. The evidence of Shri Harbhajan Singh M.W. 3 who is the Manager of M/s New Karnal Co-operative Transport Society Ltd., Karnal is to the same effect. He says that they have only 21 buses and they employ about 90 workmen. All the three respondent societies have received notices from the Government. In view of the policy of the Government to nationalise the transport it is doubtful if the respondent societies would be permitted to carry on their transport business. In my opinion it is established that the respondent society are not in a positi n to bear any further financial burden specially in view of their bleak future. The submission of the learned representative of the management appears to be correct that no other private transport company is giving as much emoluments to their employees as are being given to the workmen of the respondent societies. The workmen have not dared to produce any evidence to show what emoluments are being given to the employees of the other private transport companies carrying on business either in Haryana or in Punjab. After taking into consideration all the circumstances of the case I am of the opinion that the workmen are entitled to the dearness allowance which was being given to the employees of the Punjab Roadways as on 30th June, 1967 and they have not made out a case for an increase in the dearness allowance after 30th June, 1967. I give my award accordingly . No order as to costs.

Dated 12th September, 1969.

P.N. THUKRAL,
Prisiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 3589, dated 17th September, 1969.

Forwarded (fo r copies) to the Secretary to Government,Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

P.N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 6491-A. S.O.(E)-Lab-69/25088.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Fari dabad, in respect of the dispute between the worken and the management of M/s. Hindustan Brown Boveri (P) Ltd., Faridabad.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA , FARIDABAD

Reference No. 28 of 1969

between

THE WORKMEN AND THE MANAGEMENT OF M/S. HINDUSTAN BROWN BOVERI (P) LTD., FARIDABAD.

Present:— Shri Satish Loomba, for the workmen.
Shri B. R. Ghai, for the management.

AWARD

The management of M/s. Hindustan Brown Boveri (P) Ltd., Faridabad claim that the Company has not earned any profit and there is no available surplus out of which bonus can be paid to the workmen . Accordingly the Company has allowed only 4 per cent bonus to the workmen which under the law they are bound to give and have carried forward a sum of Rs. 2,18,477/ for set off for future year. According to the workmen , however , the balance-sheet of the respondent company for the year 1966-67 discloses that the workmen should be paid bonus at the rate of 20 per cent. This position was not accepted by the management and it gave rise to an industrial dispute. The President of India in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, referred the following dispute to this Tribunal for adjudication,—*vide* Government Gagette Notification No. 1-SF-3Lab-68/6565, dated 13th March, 1968:—

Whether the workers are entitled to bonus for the year 1966-67 ? If so, with what details?

On receipt of the reference usual notices were issued to the patries by my learned predecessor Shri K. L. Gosain in response to which a statement of claim was filed on behalf of the workmen. It was pleaded on their behalf that in order to work out, exact calculation for determining the amount of bonus due to the workmen, it is necessary that the respondent company be directed to file (a) copy of the audited balance sheet and profit and loss account for the year 1966-67, (b) annual wage bill for the year as calculated for the purpose of Payment of Bonus Act, and (c) Company's computation for bonus for the year 1966-67.

The management in their written statement have raised a preliminary objection that under the order of reference this Tribunal can only determine whether the workers are entitled to bonus for the year 1966-67 and if so, with what details. It is urged that in para No. 2 of the statement of the claim it is admitted that the Company has paid bonus equivalent 4 per cent of the total wage of the salary of the workmen during the financial year 1966-67. The order of reference not being for additional bonus and being only for determining the bonus is incompetent and invalid. It is further pleaded that the respondent company is a public limited company registered under the Company's Act having its registered office and head office at Bombay and having Factories at Baroda, Agra, Faridabad, Gaziabad, and branches at Delhi Calcutta, Madras, Haydrabad, Bangalore and Calcutta i. e. to say throughout the Union of India. It is submitted that all the factories and branch offices of the company including the one at Faridabad are centrally controlled by the Head Office at Bombay and on a true consideration of section 2(5) read with section 3 and other applicable provisions of the Payment of Bonus Act, 1965 and the relevant provisions of the Industrial Disputes Act, 1947, the appropriate Government for adjudication of a dispute regarding bonus for any financial year would either be the State Government of Maharashtra in case the matter is deemed fit for reference to Industrial Tribunal Maharashtra, or the Central Government in case the matter is deemed fit for reference to the National Tribunal. It is submitted that the President of India or the Industrial Tribunal, Haryana, have no jurisdiction either to make a reference or to adjudicate respectively on the question of bonus and therefore, the demand for bonus should be rejected in limine as the order of reference itself is in excess of the jurisdiction and it is vitiated by an error apparent on the face of reference.

On merits it is pleaded that the Profit and Loss Account and Balance-sheet are duly audited under the Companies Act by chartered Accountants and the net profit for the year 1966-67 after charging the prior charges does not leave any available surplus but on the contrary there is deficit. It is pleaded that the workmen are entitled to only 4 per cent of their wages/salary for the year 1966-67 as minimum bonus under section 10 of the Payment of Bonus Act, 1965 and the company is entitled to set off the amount of bonus so paid in the future years. Copies of the audited balance-sheet and profit and loss account for the said financial year in respect of employees for the purpose of Payment of Bonus Act, 1965, and company's computation of available surplus, allocable surplus, bonus payable and the amount of set off in respect of financial year 1966-67 were filed as desired in the claim statement.

My learned predecessor Shri K. L. Gosain directed the workmen to file their replication and to state therein the exact objections which they had against the balance-sheet and to file a calculation chart of their own on the basis of which they claimed the additional bonus.

The workmen filed their application and submitted that certain information and clarifications were needed on the points detailed in annexure 'A' to their replication and prayed that the management be directed to give the necessary details to enable the workmen to file their computation of bonus. The management in their reply dated 31st May, 1967, opposed the prayer of the workmen asking for clarification and gave certain clarifications which were not complete and my learned predecessor,—*vide* his order dated 9th June, 1968, directed the management to give further clarifications as detailed in his order. It is, however, not necessary to discuss at length the points on which clarifications were sought by the workmen and to comment on the validity of the objections raised by the management, because the management ultimately did give the required clarifications as directed by my learned predecessor and in support of the same filed an affidavit of Shri R. G. Parikh at present their Commercial Manager at Faridabad. Previously Shri Parikh was working in the Finance Division in the Head Office at Bombay. The representative of the workmen does not accept the correctness of the clarifications given by the management and filed his calculation chart. Thereafter the management produced Shri R. G. Parikh in evidence and closed their case. The workmen did not produce any evidence in rebuttal.

I have heard the learned representative of the parties at length and have gone through the records. The learned representative of the management did not press the preliminary objections raised in the written statement regarding the validity of the order of reference or the competency of the Government of Haryana to refer the dispute to this tribunal for adjudication and the learned representatives of the parties confined their arguments only to the merits of the case.

The first dispute between the parties is with regard to the amount of depreciation which has been claimed by the respondent company. In the balance-sheet as also in the bonus calculation, Ex. M. W. 1/1, which was originally filed, the amount of depreciation claimed is Rs. 17,32,569 only. The depreciation now claimed is Rs. 18,37,159. The increase in the depreciation is claimed on the ground that the respondent company is entitled to claim depreciation which is admissible under sections 6 and 7 of the Payment of Bonus Act, 1965, and if depreciation is calculated according to the interpretation given to these sections by the Lordships of the Supreme Court in the judgment delivered on 20th August, 1968, in Civil Appeal No. 2138 and 2196 of 1966 in the case of Metal Box Co. of India Lin ted, the respondent company is entitled to claim Rs. 18,37,159 as depreciation. The management have not given any evidence to show how this figure of Rs. 18,37,159 has been arrived at. Only a certificate of Income Tax Officer Company's circle 1(9) Bombay has been filed. This certificate is to the effect that the respondent Company has been allowed a total depreciation of Rs. 18,26,908 in its income tax assessment for 1968-69 pertaining to its year of account ending 30th April, 1967. The learned representative of the workmen has submitted that no Presumption of correctness can be attached to this certificate and under section 23 of the Payment of Bonus Act a presumption of accuracy is attached only to the balance-sheet and the profit and loss account if duly audited by an auditor duly qualified to act as auditor of companies under sub-section (1) of section 226 of the Companies Act, 1956.

The second objection of the learned representative of the workmen is to the development rebate amounting to Rs. 7,07,526 which has now been claimed in the bonus calculation. In the balance sheet development rebate amounting to Rs. 5,50,000 only had been claimed. Shri Parikh in his affidavit has explained that a cooling plant of the value of Rs. 1,65,507 has been installed at Makerpura. It is alleged that in the balance-sheet this plant was included under the heading "furniture and fixture". However, according to the incon e tax rules a cooling plant is to be considered under the heading "Machinery and Plant" and the management is entitled to development rebate on plant and machinery at the rate of 35 per cent and therefore, the management have now added Rs. 57,928 as development rebate on this item. The representative of the workmen did not accept this explanation. His objection is that it was necessary for the management to have produced the original accounts in order to prove that in fact the cooling plant installed at Makerpura was in fact included under the heading "furniture and fixtures" and that the mere testimony of Shri Parikh on this point was not enough. It is requested that a presumption of correctness is attached to the printed balance-sheet and profit and loss account only if it is audited by a duly qualified accountant but no presumption of correctness can be attached to mere one testimoney of a witness unless the original books of accounts are also produced and the certificate of the Income Tax Officer that a sum of Rs. 7,07,526 has been allowed on account of development rebate too has no evidentiary value.

The third objection of the learned representative of the workmen is to the additional sum of Rs. 5,40,660 which the respondent company claims to have paid for the raw material imported from abroad on deferred payment on account of the devaluation. It is submitted that the respondent company is holding capital in foreign currency of the value of Rs. 5,42,000 in Switzerland and as a result of devaluation the value of this capital has also gone up but no corresponding increase in the value has been given. It is submitted that the respondent company could not debit an additional sum of Rs. 5,40,000 which according to them had to be paid on account of devaluation without taking credit for the corresponding increase in the value of the foreign currency held by the company.

I have carefully considered the submission s of the learned representative of the workmen and in my opinion his submissions are technically correct. It was necessary for the management to have shown how they have calculated the depreciation and how the figure of Rs. 18,37,159 has been arrived at and a mere production of the certificate of the Income Tax Officer was not enough. Secondly it was also necessary for the management to have produced their books of account in order to show that the cooling plant installed at Makerpura was actually included under the heading "Furniture and Fixtures" and the mere affidavit or oral of Shri Panble testimony is not sufficient.

As regards the amount held in foreign currency in Switzerland the value of which has also appreciated in terms of rupees by reason of devaluation, it is submitted on behalf of the management that this amount has been held in capital account and therefore the appreciation of its value cannot be treated as profit. The learned representative of the workmen urged that the management have not filed a certificate of the Reserve Bank in support of this contention. The learned representative of the management has filed an application along with the originally letter from the Reserve Bank to prove that this amount has been allowed to be held only for the purpose of purchase of capital goods. The learned representative of the workmen has opposed this application and has submitted that the management has closed their evidence and they should not be permitted to fill in the locunas in their case by the production of fresh evidence. The learned representative of the workmen is technically correct but on the point in my opinion nothing. should be decided on mere technicalities and an attempt should be made to do substantial justice between the parties. However, it is not necessary to dilate on these points because the learned representative of the management has rightly pointed out that even if all the submissions of the learned representative of the workmen are accepted and the calculation chart prepared by him is taken as correct even then there would be no available surplus because then it would mean that the profits earned by the respondent company are higher and national tax at the rate of 55 per cent on this increased profits will have to be deducted and no surplus would be left. The learned representative of the workmen has not given his calculation chart after meeting provision for the increased taxation and has not shown that there would still be available surplus. In my opinion the workmen have not been able to prove that they are entitled to bonus at a rate higher than 4 per cent which has alreay been allowed to them.

I give my award accordingly. No order as to costs.

Dated the 16th September, 1969.

P. N. THUKRAL,
Presiding Officer
Industrial Tribunal, Haryana,
Faridabad.

No. 3594, dated the 19th September, 1969.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Aaryana,
Faridabad.

No. 6503-A.S.O.(E)-Lab-69/25092.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of Bharat Carbon and Ribbon Manufacturing Co., Ltd., Faridabad.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

REFERENCE No. 13 of 1969

between

THE WORKMAN AND THE MANAGEMENT OF M/S BHARAT CARBON AND RIBBON MANUFACTURING CO., LTD., FARIDABAD

Present.—

Shri Onkar Parshad, for the workmne.

Shri D. C. Bhardwaj, for the management.

AWARD

An industrial dispute having arisen between the workmen and the management of M/s Bharat Carbon and Ribbon Manufacturing Co. Ltd., Faridabad with regard to the scales and grades of pay of the workmen. The same was referred to this Tribunal for adjudication under section 10(1) (d) of the Industrial Disputes Act, *vide* HARYANA GOVERNMENT GAZETTE Notification No. ID/FD/4-D/8189, dated 19th March, 1969. The subject-matter of dispute which has been referred is as under :—

Whether the grades and scales of the workmen be revised? If so, with what details and from which date?

On receipt of the reference, usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workmen and the management filed their written statement. In the claim statement the workmen have not indicated what scales and grades should be fixed on behalf of the management it is pleaded that a settlement was arrived at between the parties on 25th September, 1963 and under this settlement the following scales and grades were fixed :—

I. 60—1—65/66.50—1.50—72.50/74—1.50—83.

II. 62—2—72/75—3—93/96—3—114.

III. 90—3—111/114—3—126/129.50—3.50—147.

IV. 110—3.50—127.50/131—3.50—145/149—4—173.

V. 130—4—150/154—4—170/175—4.50—202.

VI. 155—4.50—177.50/182—4.50—204.50.

It is alleged on behalf of the management that it was agreed that the permanent workers and the probationers would be fitted in these grades in such a manner that every worker would get an increase of atleast Rs. 5/- P.M. in his total wage and it was further agreed that the management would have the discretion to appoint the worker on any of these grades or to give any special allowance to any worker or class of workers and to introduce any higher grades or to appoint a workman at salary of Rs. 200/- or more outside these grades and to give them increments at their discretion.

According to the management this settlement was under sub-section (3) of section 12 of the Industrial Disputes Act and it was to remain in force upto 30th June, 1967, but before the expiry of this period the management and the most of the workmen enterd into another settlement on 8th March, 1967 because of the hardship which was being caused to the workmen by reason of increase in prices. Under this settlement it was agreed that all the workmen would get an *ad hoc* increase of Rs. 10/—P.M. in their pay with effect from 1st August, 1966 and this increase would be effective so as to raise would be effective so as to raise the minimum and maximum of all grades leaving the right of increments unaffected. The piece-rated workers were also given a suitable increase in piece-rate that they were too got an increase of wages of about Rs. 10/- a month. This settlement is to remain in force up to 31st July, 1969.

Before the expiry of this settlement, the workmen gave a demand notice, dated 6-9-68 in which it was alleged that higher scales were being given in other factories and that the grades of the workmen in the respoondent factory were very low and so the grades should be revised. It was also alleged that the minimum wage fixed

by Government is Rs. 72/-P. M. but the management are paying Rs. 60/- P. M. to some of their workmen. This demand is being opposed by the management on the ground that the workmen could not raise any fresh demands before the expiry of the period of settlement and secondly the statemen of claim filed by the workmen is irregular inasmuch as it is not stated what scales and grades of pay were being demanded and no reason had been given in support of the claim. The following two preliminary issues were accordingly framed:—

1. Whether the statement of claim is irregular and illegal because no reason has been assigned in support of the claim?

2. Whether the reference is barred by the settlement between the parties?

During the course of argumnets the representative of the management pointed out that the grades and scales of pay were fixed under the settlement, dated 25th October, 1963 which has merged in the settlement dated 8th March, 1967 and the workmen give up their demands for the revision of grades and scales of pay, it is alleged that this settlement is binding on the workmen upto 31st July, 1969 and for this reason also the present reference is not valid. This objection was not specifically taken in the written statement and since it was purely technical objection the management were permitted to file the supplementary written statement and to take up this objection. The necessary written statement was fixed and the following additional issue was framed.

3. Whether the present reference is barred because it is against the sense and spirit of settlement arrived at between the parties, dated 25th September, 1963 under section 12(3) of the Industrial Disputes Act, 1947 ?

I have heard the learned representatives of the parties and have carefully considered their submissions. My findings are as under :—

Issue No. 1.—It is not possible to throw out the reference made by the Government simply on the ground that the claim statement is vague or no reasons have been given in support of the demands. If any clarifications is required the workmen can be called upon to give the necessary reasons. I decide this issue accordingly.

Issue Nos 2 and 3.—These issues can conveniently be discussed together in my opinion the submission of the learned representative of the management is correct that the order of reference is bad because the workmen could not raise the dispute before validly terminating the previous settlements which are binding on the parties.

As already pointed out the workmen had entered into a settlement under section 12 (3) of the Industrial Disputes Act with the management on 25 th September, 1963 in which certain grades were fixed. This settlement was to remain in force till 30 th June, 1967. The workmen also entered into another settlement with the management on 8th March, 1967 which was to remain in force upto 31st July, 1967. Neither of these settlements have been validly terminated by giving the necessary notice under sub section (2) of Section 19 of the Industrial Disputes Act. This means that the previous settlements between the parties were still in force and binding on them when the present reference was made. Obviously this could not be done. I am supported in this view by an authority of the Supreme Court reported in 1968-1 LLJ-555. In this case the specific plea of the union was that the various representations made by it to the management as well as the presentation of the Charter of demand amounted to a notice of termination of the award. Their Lorsdship of the Supreme Court was pleased to hold as under:—

> It cannot be over-emphasized that an intimation, claimed to have been given, regarding the termination of an award, must be fixed with reference to a particular date so as to enable a Court to come to the conclusion that the party, giving that intimation, has expressed its intention to terminate the award. Such a certainty regarding date, is absolutely essential, because the period of two months, after the expiry of which, the award will cease to be binding on the parties, will have to be reckoned, from the date of such clear intimation.

The learned representative of the workmen has relied upon an authority of the Supreme Court reported in 1964-II-LLJ-100. In this case the workmen did not give a separate notice terminating the settlement. In the charter of demand itself it was stated that the union had resolved to terminate the settlement and submitted their demands. On these facts it was held by the Supreme Court that there is no perscribed form for notice required to be given under sub-section (2) or sub-section (6) of Section 19 of the Industrial Disputes Act terminating the settlement or award and all that is to be seen is whether the provisions of this Section are complied with and in substance a notice is given as required thereunder.

This authority is clearly distinguishable. In this case the workmen did formally intimate to the management of their intention to terminate the settlement and all that their Lordship of the Supreme Court were pleased to hold is that there is no prescribed form for notice required to be given under sub-section (2) or sub-section (6) of Section 19 of the Industrial Disputes Act terminating the settlement or award. It has nowhere been held that no notice at all is necessary. The submission of the learned representative of the workmen, that the mere putting up of fresh demands by itself express the intention of the workmen to terminate the previous settlement is not correct. It is very essential that the previous settlement or award must be formally terminated before any fresh reference can be made. Since the previous settlements in the present case have not been formally terminated therefore it must be held that the order of reference is invalid.

The learned representative of the workmen has also relied upon the authority reported in 1966-I-LLJ-310 and submitted that the settlement, dated 8th March, 1967 is not valid because it was entered into by the parties before the expiry of the period of the first settlement which was to remain in force till 31st July, 1967. This authority is also not helpful to the workmen. In 1965-I-LLJ-310 there was a settlement between the parties under which the management were debarred from retrenching any of the workmen before the expiry of three years. Before the expiry of the period of this settlement the management and their workmen entered into another

settlement under which the management were permitted to retrench some of their workmen It was held that the second settlement was not valid because the previous settlement was still in force and had not been validly terminated before entering into a second settlement.

This authority does not help the learned representative of the workmen because if the settlement, dated 8th March, 1967 is held to be not valid because the previous settlement dated 25th September, 1963 was then in force, the present reference will also have to fail on the same logic because the reference has been made without formally terminating the settlement, dated 25th September, 1963 as required by sub-section (2) of Section 19 of the Industrial Disputes Act, 1947.

Hence after carefully considering the submissions of the learned representative of the workmen, I am of the opinion that the reference is not valid. I give my award accordingly. No order as to cost.

Dated 12th September, 1969

P. N. THUKRAL,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 3591, the 17th September, 1969

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 12th September, 1969

P.N. THUKRAL,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No 6504-A.S.O.(E)-Lab-69/25098.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Rohtak-Delhi Transport Co. Ltd., Rohtak.

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA FARIDABAD

Reference No 38 of 1968.

between

THE WORKMEN AND THE MANAGEMENT OF M/S ROHTAK-DELHI TRANSPORT CO. LTD., ROHTAK.

Present :—Shri S.N. Vats, for the workmen.
Shri Chanchal Singh for the management.

AWARD

An industrial dispute between the workmen and the management of M/s Rohtak-Delhi Transport Co. Ltd., Rohtak having arisen the same was referred to this Tribunal for adjudication,– *vide* Gazette notification No ID/RK/19432, dated 18th July, 1968. The specific matters in dispute referred for adjudication are as under :—

(i) (a) Whether all the drivers and conductors should be paid Trip allowance. If so; with what details?

(b) Whether the drivers and conductors employed before and after the year 1957 should be paid commission on booking at one and the same rates. If so, with what details and from which date ?

(ii) Whether the drivers and conductors should be paid night allowance when they are required to stay out of their headquarters . If so; with what details ?

(iii) Whether Rs. 15 p.m. as Dearness Allowance should be paid to all the workmen of the company at a uniform rate. If so; with what details ?

(iv) Whether the management should spare the junior most drivers/Conductors when no work is available for them and whether the selection of the workers for deputing on special trip should be made on the principal of seniority. If so; with what details ?

(v) Whether the contract system in the workshop of the company should be abolished . If so, with what details and from which date ?

On receipt of the reference usual notices were issued to the parties in responce to which the statement of claim was filed on behalf of the workmen and the management filed their written statement. On behalf of the management a number of preliminary objections have been raised. It is pleaded that the demand notice given on behalf of the workmen does not indicate the numbe of workmen of the respondent concern who supported the demand referred to this Tribunal for adjudication. According to the management there is no dispute with their workmen. The second objection is that no conciliation proceedings were held in the matter and in the absence of conciliation proceedings no reference could be made. The third ojbection is that the subject matter of the first three demands if already covered and concluded by agreements between the parties wihich are still in force and three

demands could not, therefore, be reagitated. The following three issues were framed by my learned predecessor Shri K.L. Gosain for preliminary decision.

1. Whether the dispute in question is not an industrial dispute for the reasons given in para 1 of the preliminary objections in the written statement ?

2. Whether the conciliation proceedings were not held in this matter and if so, is the reference invalid because of that ?

3. Are the demands Nos. 1 to 3 covered by any agreements between the parties. If so, what are those agreements and what were the terms of the same ?

The parties have produced their evidence in support of their respective contentions. I have heard the learned representative of the parties and have carefully gone through the record. My findings are as under:—

Issue No. 1.—The industrial dispute on behalf of the workmen of the respondent society has been sponsored through Shree Haryana Motor Transport Workers Union Regd., Rohtak. Accordingly to the evidence of Shri S.N. Vats, Secretary of the union about 35 or 36 workmen of the respondent society are members of his union. According to the management they have in all about 78 or 79 workmen out of whom as many as 72 workmen have given an application marked Ex.R. 2 in which it is alleged that a workman have no dispute with their management and Shree Haryana Transport Workers Union has no *locus standi* to raise an industrial dispute with the management on their behalf. The copy of the application was given to Shri S.N. Vats who is representing the workmen in this case. Shri Vats has not even cared to file a list of the workmen who according to him support the demand which has been referred for adjudication. It is a common ground that the membership of Shree Haryana Motor Transport Workers Union is not limited to the employees of the respondent concern only. All persons employed in Transport Industry in Rohtak District can become members of this union. Shri Vats has stated that five members elect a representative who is called a delegate and the meeting of the delegates was held on 9th January, 1968 in which a decision was taken that a notice of demands on the basis of which the present reference has been made be given to the respondent society. According to the evidence of Shri Vats, Sarvshri Udhey Singh, Driver, Rihka Ram, Krishan Lal Sehgal, Radhey Sham, Lachhman Singh, Gurmukh Singh, Murari Lal, Harmohinder Singh and Sakhir Chand who are the employees of the respondent society attended this meeting. The delegates who attended the meeting on 9th January, 1968 are supposed to have represented 35 or 36 workmen of the respondent society. It is, therefore, submitted that it could not be said that the substantial number of workmen of the respondent society did not support the demand or that there is no industrial dispute between the parties as maintained by the management.

I have carefully considered the submission of the learned representative of the workmen and in my opinion there is no force in them. Before an industrial dispute can properly be raised, it is essential that a substantial number of workmen must sponsor the demand and this function can not be delegated to any so called representatives. For example it would not be legal for the workmen to pass a general resolution authorising their President or other office bearers of the union to raise such demand as they may think proper from time to time. A demand can be said to have been sponsored properly only if a substantial number of workmen personally support that demand. Shri Vats conceeded in cross examination that he could not even state which particular delegate who attended the meeting on 9th January, 1968 represented which five workmen. Thus we find that only 9 workmen out of a total of 78 workmen have sponsored the present demand. The meeting of the managing committee of this union is supposed to have been held on 6th February, 1968 in which Sarvshri Kanhaya Lal, Amar Nath, Phiraya Lal, Sita Ram, Madan Lal who are the employees of the respondent society attended and it was decided that the demands raised in the meeting, dated 9th January, 1968 be persued with the management and if they are not accepted then an other meeting of the managing committee be called. Since the demands were not accepted, it is alleged that an other meeting of the managing committee was held on 9th February, 1968 in which it was decided that all necessary action including hunger strike for the fulfilment of the demands be taken. In this meeting Sarvshri Lachhman Singh, Udhey Singh, Radhey Sham, Amar Lal and Sakhir Chand and Tikan Lal employees of the respondent society attended. If the names all of the workmen of the respondent Company who attended one meeting or the other are added and compared with the list of the workmen supplied by the management and the correctness of which has not been challenged by the representative of the workmen, we find that in all only 15 workmen of the respondent society attended one meeting or the other of the union in support of the demand which have been referred for adjudication. It can not be said that 15 workmen out of 78 workmen constitute a substantial number of workmen who support the demand which have been raised.

The decision of the question as to whether a substantial number of workmen did or did not sponsor the present demands have become all the more important because an application bearing the signatures of as many as 72 workmen out of a total of 79 workmen have been filed in which the workmen have stated that they have no dispute with the management and they do not press the demand which has been referred to this Tribunal for adjudication.

The learned representative of the workmen submitted that the letter of authority in form 'F' filed in this Court bear the signatures of the large number of workmen and therefore it would not be correct to say that the demands are not supported by substantial number of workmen. In the first place most of the signatures on Form 'F' are not legible. This letter of authority is proved by the evidence of Shri Udhey Singh W.W. 1 and Shri Phiraya Lal W.W. 2. Shri Udhey Singh states that 32 or 33 members signed the Form while Shri Phiraya Lal states that 25 or 26 workers attended the meeting. The Form 'F' purports to contain the signatures of 24 workmen. Since the names of all the signaturies on Form 'F' are not legible, it is not possible to say positively that the signaturies are all employees of the respondent society. Moreover even if it is held that all the signatories on Form 'F' are of the employees of the respondent society still it would not be correct to hold that the present demands were sponsored by a substantial number of workmen because the demands were for the first time formulated in the meeting, dated 9th January, 1968. We have already seen that only 8 workmen of the respondent society attended this meeting and thereafter two meetings of the managing committee were held. In the meeting, dated 6th February, 1968, only 4 workmen of the respondent society attended and in the meeting, dated 9th February, 1968, the number of such workmen was only 5. The demands were raised then and the letter of authority in Form 'F' was filed in this Court only after the dispute has been referred. The important

thing to determine is the number of workmen who sponsored the demand and not the number of workmen who have signed the letter of authority in favour of Shri Vats because it appears that most of the workmen who were persuaded to sign the letter of authority after the reference had been made have backed out and have submitted an application praying that they are not a party to the dispute with the management. Hence after carefully considering all the aspects I am of the opinion that it can not be said that the present demand was sponsored by an appreciable number of workmen. I, therefore, find this issue in favour of the management.

Issue No. 2.—The onus of this issue lay on the management but they have led no evidence to prove this issue. Under sub-section (5) of section 12 of the Industrial Disputes Act, the Government makes a reference of an industrial dispute only after considering the report of the Conciliation Officer. All the officials acts are persumed to have been done in accordance with the law and since the reference has been made, it must be presumed that the conciliation proceedings must have been held and the Conciliation Officer submitted his report under sub-section (4) of Section 12 of the Industrial Disputes Act. In case no conciliation proceeding actually took place the management could have easily summoned the Conciliation Officer to prove this fact. Since no evidence has been led on this point, this issue must be found against the management.

Issue No. 3.—The management have filed copies of the two awards, dated 7th February, 1961 and 27th January, 1961 as also of the settlement, dated 16th October, 1967 in support of this issue. The submission of the learned representative of the workmen is that the settlement, dated 16th October, 1967 was arrived at with the puppet union of the workmen. In view of my decision that the present dispute has not been sponsored by a substantial number of workmen, it is not necessary to decide this issue.

The present reference must fail by reason of the adverse findings on issue No. 1. Under the circumstances of the case I make no order as to cost.

P. N. THUKRAL,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 12th September, 1969

No. 3590, dated 17th September, 1969

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 12th September, 1969

The 17th October, 1969

No. 6506-A.S.O.(E)-Lab-69/25250.- In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of (i) M/s Karnal Co-operative Transport Society Ltd., Karnal, (ii) M/s Karnal Delhi Co-operative Transport Society Ltd., Karnal, (iii) M/s New Karnal Co-operative Transport Society Ltd., Karnal.

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 67 of 1967

between

The Workmen and the Management of—

(1) M/s Karnal Co-operative Transport Society Ltd., Karnal ;
(2) M/s Karnal-Delhi Co-operative Transport Society Ltd., Karnal ;
(3) M/s New Karnal Co-operative Transport Society Ltd., Karnal.

Present—

Sarvshri Madan Lal Gupta and Madhu Sudan Saran Cowshish for the workmen.
Shri M.L. Saini for the managements.

AWARD

The workmen of three transport societies known by the name of (i) M/s Karnal Co-operative Transport Society Ltd., Karnal, (ii) M/s Karnal-Delhi Co-operative Transport Society Ltd., Karnal and (iii) M/s New Karnal Co-operative Transport Society Ltd., Karnal demanded the introduction of the gratuity scheme. This demand was not accepted by the managements of the concerned societies and this gave rise to an industrial disputes. The Governor of Haryana in exercise of the powers conferred by Section 10(1)(d) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication,—*vide* Government Gazette notification No. 238-SF-III-Lab-67, dated 3rd August, 1967 :—

Whether the gratuity scheme schould be introduced in the above mentioned Transport Companie ? If so, with what details and from which date ?

On receipt of the reference usual notices were issued to the parties by my learned predecessor Shri K. L. Gosain in response to which a statement of claim was filed on behalf of the workmen and the management of three, transport societies filed separate written statements which are similar. The workmen in the statement of claim have submitted that the three respondent societies are suceessors of Karnal Co-operative Transport Society Ltd. Karnal are still essentially one unit for the purpose of implementing the liabilities under taken by the parent society,

It is alleged that this society had entered into a settlement dated 17th April, 1957 with its employees which was to remain inforce for a period of 10 years. In 1965 the society was split into three societies which are the respondents in this case and, *vide* resolution No. 3, dated 6th December, 1965 it was agreed that the succeeding societies would continue to be bound by the terms of the settlement, dated 17th April, 1957. It is alleged that under clause 1 of the settlement it was agreed between the parties that the terms and conditions of service applicable at present to all categories of employees of the Punjab Roadways and or which may be modified from time to time by the Government would be applicable to the employees of the parent society. It is pleaded that in view of this agreement the managements of the three respondent societies are bound to introduce a gratuity scheme on the lines on which it is being made applicable to the employees of the Punjab Roadways and Haryana Roadways. It is further pleaded that the desirability of introducing a gratuity scheme is now acknowledged by a number of Industrial Tribunals and the financial condition of the respondent societies also amply justifies the introduction of gratuity scheme. It is alleged that originally the parent society was started with a capital of Rs 2,75,000 in 1948 and without putting any more money from the share holders the capital of the society has gone up to Rs 7,00,000. Thus according to the workmen the capital has come out from profits of the society which was earned by the hard labour of the workmen. It is pleaded that the society is paying bonus right from the year 1953 and is also paying 10 per cent of the profits as audit fee to the Co-operative Department. In addition a large sum of money is paid as income Tax. It is pleaded that the three respondent societies is the biggest unit in the Haryana transport companies with the exception of Haryana Roadways. It is alleged that the societies are paying Re 1 per share per month to the share holders regularly from the year 1949 and have advanced Rs 3,00,000 to them. According to the workmen the capital invested by the share holders has all been paid back and the societies are now working with earned profits only and it was, therefore, proper that the workmen should also be benefitted from the accumulated profits. It is pleaded that in 1962 the demand of the workmen for the introduction of gratuity scheme was accepted by the management in principle as is evident from the letter of the Secretary to Government, Punjab, Labour Department No. 5130-IV-Lab-III-62 67, dated 5th January, 1963. The workmen claim that the gratuity scheme should be introduced on the lines adopted in Haryana and Punjab Roadways.

The management in their written statement raised a preliminary objection that the order of reference was bad because it had been made under Section 10(1)(d) of the Industrial Disputes Act. It is also pleaded that the State Government had exercised its discretion by declining to make the reference with regard to the introduction of gratuity scheme. It is alleged that the demand was rejected,- *vide* letter dated 5th January, 1963. This demand was again raised.--*vide*, demand notice, dated 30th November, 1965 and Government had no jurisdiction to re-consider the case by making the present reference. On merits it is pleaded that the respondent societies came into existence only on 19th May, 1966 and their financial position is neither sound nor stable. It is pleaded that the workmen are already enjoying better service conditions and their total emoluments are comparatively higher than those of other private transport companies. It is further pleaded that the earnings have been reduced because of the rise in the price of tyres, tubes, spare parts, diesel and other accessories without any proportionate increase in the fare during the last two years, with the result that the societies would now suffer a loss. The following two issues which arose from the pleadings of the parties were framed by my learned predecessor Shri K.L. Gosain :

(1) Whether the reference in question is invalid and in competent for grounds mentioned in clauses A & B of para 1 of the preliminary objections in the written statement of the management ?

(2) Whether the gratuity scheme should be introduced in the above-mentioned transport companies ? If so, with what details and from which date ?

At the request of the management, issue No. 1 was treated as a preliminary issue and was tried as it. The parties were given opportunity to lead their evidence on the preliminary issue and after hearing the representatives of the parties my learned predecessor,- *vide* his order, dated 10th November, 1967 decided this issue in favour of the workmen. The order, dated 10th November, 1967 is Annexure A to this Award.

As regards the merits of the case the workmen rely on the settlement, dated 17th April, 1957. Shri Paras Ram A.W. 1 who is a Record Keeper in the office of the Labour Commissioner, Punjab has produced a copy of this settlement and it is marked Exhibit A.W. 1/1. Shri Chaman Lal A.W. 2 who is an accountant of M/S Haryana Roadways, Ambala City has produced a copy of gratuity scheme which is inforce in Haryana Roadways and it is marked Exhibit A.W. 2/1.

Evidence has also been led to prove that gratuity scheme is inforce in the other private companies. Shri Harbans Lal A.W. 3 Office Secretary of the union of the workmen has stated that gratuity scheme is inforce in three transport companies namely (i) Rohtak District Co-operative Transport Society Ltd., Rohtak, (ii) Modern Co-operative Transport Society Ltd., Gurgaon, and (iii) It had Motor Transport Company Ltd., Delhi. The witness has stated that in the third company the gratuity scheme was introduced by an award of the Industrial Tribunal and in the other companies the scheme was introduced by mutual agreement. Shri Mohan Lal A.W. 5 who is also the General Secretary of the union of the workmen has, however, admitted in his statement dated 21st May, 1968 that no gratuity scheme is in operation either in Karnal-Kaithal Co-operative Transport Society Ltd. Karnal or in the Indo Motor Transport Company (P) Ltd., Karnal. He has produced the letter from the Labour Commissioner marked Exhibit A.W. 5/1. He also produced two more letters marked Exhibit A.W. 5/2 and Exhibit A.W. 5/3. All the three letters have been admitted to be correct by the representative of the management. Shri Pushpinder Nath A.W. 1 an Assistant in the office of the Deputy Registrar, Co-operative Societies, Karnal produced the balance-sheets of the parent society which was known by the name of Karnal Co-operative Transport Society Ltd. Karnal and is marked Ex. A.W. 1/1. The balance-sheets of the respondent societies are marked Ex. A.W. 1/2 to A.W. 1/3.

Although the workmen in their claim statement filed by the tried to justify [illegible] introduction of the gratuity scheme on the ground that the financial position of the respondent [illegible] because their capital had increased from Rs. 2,75,000 in 1948 to Rs. 70,00,000 simply from the profits reason of the hard work of the workmen and copies of the balance-sheets were also got produced [illegible] management had closed their case the representative of the workmen completely changed his [illegible] that he did not wish that the introduction of the gratuity scheme should depend upon the capacity [illegible] societies to bear the increased financial burden. The stand now taken up is that the management [illegible] respondent societies are bound to introduce the gratuity scheme because under the settlement, dated [illegible] with resolution No. 2 passed on 6th December, 1965 it was agreed that the terms and conditions [illegible] to all categories of employees of the Punjab Roadways and as may be modified from time to time would be applicable to the employees of the parent society and the Punjab Roadways have introduced [illegible] The workmen have also gave a statement to this effect.

In view of the statement given by the representative of the workmen an application was given on behalf of the management for framing an additional issue and for permission to produce further evidence. The following additional issue was accordingly framed :—

Whether the workmen cannot ask for the introduction of the gratuity scheme simply on the basis of the settlement, dated 17th April, 1957?

Since the management had closed their evidence before the additional issue was framed an opportunity was given to them to produce additional evidence. The management re-summoned Shri Dharam Pal Bhatia Head Assistant in the establishment of the Provincial Transport Controller, Punjab, Chandigarh and did not pro duce any other evidence. Shri Dharam Pal Bhatia was not in a position to produce the balance sheet summoned from him. He stated that the balance sheet for the year 1966-67 which was being summoned from him was still under audit by the Accountant-General, Punjab and he was, therefore, unable to produce.

Issue No. 2.—In my opinion the submission of the management is correct and additional issue is correct. It will not be out of place to point out at this stage that the management of the three respondent societies had raised a preliminary objection that the present reference was not competent because the demand of the workmen for the introduction of the gratuity scheme had been previously rejected and Government was not competent to reopen the matter and make a reference. This objection was over ruled by my learned predecessor Shri K.L. Gosain,- *vide* his order, dated 10th November, 1967. It was pointed out by him that the workmen had sent the demand notice on the managements to introduce gratuity scheme some time before the 22nd of June, 1965 and they desired to have a reference on the point. The Government then refused to make the reference by their letter Ex. R/1 because till then it was felt that the workmen could not raise any industrial dispute except that of individual workmen because the settlement, dated 17th April, 1957 was then in force and when the workmen gave another demand notice on 17th December, 1966, the Government kept the matter pending till 1st April, 1967 that is till from the point of view of the Government the settlement, dated 17th April, 1957 was binding on the parties and the present reference was made only after the expiry of the period of the settlement. It was only for this reason that the my learned predecessor repelled the preliminary objection of the management and held that the reference was valid. In case the workmen had taken up the stand that the terms of settlement dated 17th April, 1957 were still binding on the parties, the order of my learned predecessor would certainly have been different because now what the workmen desire is not any adjudication upon the propriety of their demand be made but they simply desire the inforcement of the terms of the settlement, dated 17th April, 1957 because from their point of view this settlement continues to be binding notwithstanding the fact that the period of ten years for which the parties had entered into the settlement in 1957 had expired and the management had also given a two months notice in accordance with law terminating the settlement. The High Court in Civil Writ No. 1152 of 1968 a copy of which is in the connected reference No. 21 of 1968 has also been pleased to hold that settlement, dated 17th April, 1957 had ceased to exist. It is there fore clear that for the purpose of adjudicating upon the reference the workmen cannot be permitted to take their stand simply on the settlement dated 17th April, 1957 and ask this Tribunal not to adjudicate upon the demand on merits and direct the management to introduce the gratuity scheme on the lines at which it has been introduced by the Punjab Roadways. Incidently it may also be pointed out that the workmen have also not filed a copy of the gratuity scheme which has been introduced by the Punjab Roadways. Hence the introduction of the gratuity scheme on the lines on which it is said to have been done by the Punjab Roadways is not possible.

As regards the merits of the case the respondents have produced as many as eight witnesses. Shri B.R. Bahrami, Deputy Superintendent, Transport Department, Haryana has produced a copy of the notification marked Ex. R.W. 1/1 Shri N.K. Sehgal R.W. 2 Secretary of the Haryana Motor Union, Chandigarh has produced a copy of the agreement marked Ex. R.W. 1/1 which was arrived at by the workmen of the Punjab Roadways. The union has stated that after the re-organisation of the state, this agreement has been recognised by boththe Governments. The witness produced the cutting from news papers marked Ex. R.W. 2/1 to R.W. 2/4 giving out that the Government of Haryana have decided to nationalise transport industry- Shri V.N. Bhatia R.W. 1 Senior Auditor in the office of Provincial Transport Controller, Haryana has produced a copy of the balance sheet of the Haryana Roadways from 1st November, 1966 to 31st March, 1967 which is marked Ex. R.W. 1/1. The witness has stated that it is a true copy of the balance-sheet and it bears the signature ofthe Provincial Transport Controller, Haryana and that the entriesof the balance sheet are correct and have been duly checked by the Accountant General, Haryana. The witness has stated that Haryana Roadways had a fleet of 475 buses on 1st November, 1966 and that on 30th March, 1967 Haryana Roadways had 496 buses.

Shri Dilbagh Rai R.W. 3, Head Assistant in the office of the Provincial Transport Controller, Punjab, Chandigarh has stated that the number of buses in the Punjab Roadways is given in Ex. R.W. 3/1. The witness was, however, not in a position to produce the copies of balance sheets for the Punjab Roadways on the ground it was not yet ready.

Shri Amarjit Singh R.W. 4 Manager, Karnal Co-operative Transport Society Ltd., has stated that the parent society was split up into three respondent societies with effect from 19th May, 1966 and during the last two or three years the margin of profit have been reduced. The witness has stated that the cost of spare parts has risen but the fare and mileage have remained stationary. The prices of the tyres and chassis are given in the statement Ex. R.W. 4/1 and R.W. 4/2. The witness has stated that nationalisation of transport appears to be imminent. The witness produced the copies of the balance sheets for the period ending 30th June, 1967 relating to his society which is marked Ex. R.W. 4/3. The witness has produced the profit and loss accounts marked Ex. R/.W. 4/4. According to the witness if the interest, Income-Tax and depreciation is taken into account then there would be a net loss of Rs. 45,106.72 paise. Ex. R.W. 4/5 is the calculation chart which was prepared by the accountant. The witness has stated that depreciation has been calculated at the rate of 25% in Ex. R.W. 4/5.

Shri Baij Nath, R.W. 5 General Manager, Karnal, Delhi Co-operative Transport Society, Ltd., Karnal corroborates the statement of Shri Amarjit Singh and has stated that their society also came into existence on 19th May, 1966,—*vide* copy of certificate marked Ex. R.W. 5/1. As regards the loss suffered by the respondent society, he has produced a chart showing variation of prices which are marked Ex. R.W. 5/2 to R.W. 5/4. The witness states that the Government have increased the passenger tax and policy of the Government is towards complete nationalisation and have recently issued a notification copy of which is marked Ex. R.W. 5/6. The witness has produced a copy of the balance-sheets of his society marked Ex. R.W. 5/7 and the copy of profit and loss account marked Ex. R.W. 5/8. The witness produced the chart Ex. R.W. 5/9 showing that his society suffered a loss of Rs. 62,000 if, interest, depreciation and Income-tax reserve is taken into consideration. Shri Harbhajan Singh R.W 6, Manager New Karnal Co-operative Transport Society, Ltd., has also stated that his society was registered on

19th May, 1955 as per copy of the certificate Ex. R.W. 6/1. The witness says that their margin of profit has gone down during the last two or three years and the prices of spare parts have risen tremendously. The witness has produced a copy of the balance sheet of his society which is marke Ex. R.W. 6/2 and profit and loss account Ex. R.W. 6/3. The witness states that after depreciat on, Income-tax and interest are taken into account his society would suffer a loss of Rs. 45,000 as per calculation given in Ex. R.W. 6/4.

It is clear from the evidence produced by the respondent that their financial position is such that they would be completely runied if gratuity scheme is introduced in the present circumstances. The respondents have no future. Complete nationalisation of transport industry is now only a matter of time. In order to prove that the Government had decided upon complete nationalisation of transport industry and application was made for summoning a copy of the Cabinet decision in this regard but Shri Bhalla I.A.S., Secretary to Government, Haryana filed an affidavit claiming privilege. R.W. 2. has however, produced cutting from Newspapers marked Ex. R.W. 2/1 to Ex. R.W. 2/4 in which the policy of the Government has been given wide publicity and it is not the case of the workmen that nationalisation of the Transport Industry is yet far off. It would, therefore, mean that if the gratuity scheme is enforced at present and complete nationalisation takes places in near future then the management would immediately be called upon to pay gratuity to their workmen in addition to compensation which they may be required to pay under Section 25 FFF of the Industrial Disputes Act, 1947. Normally the introduction of gratutity scheme does not impose any immediate financial burden on the employer because on an average not more than 3 to 4 per cent of the workmen are expected to retire but as we have already seen the position in the present case is different and if complete nationalisation comes the services of all the workmen would come to an end simultaneously and the management would be immediately called upon to pay gratuity as well as compensation under Section 25 FFF. I am of the opinion that the demand of the workmen for the introduction of gratuity scheme is not justified for the present that is till the question as to whether the routes on which the respondent societies are running their buses is or is not to be taken over by Government is decided one way or the other.

The management have led evidence to prove that the respondent societies are very small undertakings as compared with the Punjab Roadways or Haryana Roadways. It is true that the number of buses which are being run by the Punjab Roadways and the Haryana Roadways is very large and their financial position is also much more sound but the mere fact that the respondent societies are not as big as Punjab Roadways or Haryana Roadways is by itself no ground for refusing to introduce the gratuity scheme. The question as to whether the gratuity scheme should or should not be introduced in the respondent societies would depend upon a number of considerations and naturally the question as to whether they are in a position to bear the financial burden if gratuity scheme is introduced is one of vital instance and therefore the financial position of the respondent societies would require careful secrutiny. This question can be examined in detail if the Government decides to revise their policy of nationalisation and the respondent societies are allowed to run their buses and the question with regard to introduction of gratuity scheme is referred again for adjudication. With these remarks I hold that the present time is not opportune for the introduction of any gratuity scheme. I give my award accordingly. No order as to costs.

Dated 12th September, 1969.

P.N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 3588, dated 17th September, 1969.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh as required under Section 15 of the Industrial Disputes Act, 1047.

(P.N. THUKRAL),

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

ANNEXURE "A"

Reference No. 67 of 1967

Order

An industrial dispute having come into existence between the workmen and the managements of M/S Karnal Co-operative Transport Society Ltd., Karnal (2) The New Karnal Co-operative Transport Society, Ltd. Karnal and (3) The Karnal-Delhi Co-operative Transport Society, Ltd., Karnal, with regard to the enforcement of a gratuity scheme in the 3 companies referred to above, the same was referred for adjudication to this Tribunal by clause (d) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947,—*vide* Haryana Government Notification No. 238-SF-Lab-III-67, dated 3rd August, 1967.

Usual notices were issued to the parties and in response to the same the workmen filed their statement of claim and the managements filed their written statements. The pleadings of the parties gave rise to two issues only which were framed on 19th Septzmber, 1967, which are as under:—

1. Whether the reference in question is invalid and incompetent for grounds mentioned in clauses A & A of para 1 of the preliminary objections in the written statement of the management.

2. Whether the gratuity scheme should be introduced in the above-mentioned Transport companies? If so, with what details and from which date?

The management desired that issue No. 1 may be treated as preliminary issue and may be decided before the parties are called upon to lead evidence on issue No. 2 and I agreed to this course. Parties were given opportunity to lead their evidence in respect of issue No. 1 and after the conclusion of the same the representatives of the parties addressed their arguments to me in respect of the said issue.

The case of the management is that the reference in question is not valid for two reasons which are mentioned by them in clauses A & B of the preliminary objections contained in their written statement. The plea taken by the management in caluse 'A' is that the order of reference which covered the dispute of the workmen in three establishments should have been made by the Government under sub-section 5 of section 10 of the Industrial Disputes Act and not under clause (d) of sub-section 1 of section 10 of the said Act. From the very nature of the plea it is clear that it is not the case of the management that the Government had no jurisdiction to make the reference in question and the plea must be rejected on this ground alone. Even otherwise I do not find any force in this plea because once it is admitted that the Government had the power to make a reference it does not at all matter whether in the reference itself the Government have mentioned clause (d) of sub-section 1 of section 10 or sub-section 5 of section 10 of the Industrial Dispute Act, 1947. I am firmly of the opinion that the reference in question has been rightly made under clause (d) of sub-section 1 of section 10 of th. Industrial Disputes Act because this is the only clause under which references of this type can possibly be made. Sub-section 5 of section 10 only enables the Government to make one joint reference even if it relates to more than one establishment.

In clause 'B' the management has only pleaded that the Government had at one stage refused to make a reference and they could not later change their mind and make the reference in question. It is true that a settlement was arrived at between the parties with regard to certain matters on 17th April, 1957 and a copy of the said settlement is Ex. R-3, Paragraphs 7 and 9 of the same are relevant for the purposes of this case and they read as under:—

7. The workers shall not put-forth any fresh demands during the operation of this settlement except in cases of victimised workers.

9. This settlement shall remain binding for a period of ten years commencing from 1st April, 1957.

It appears that the workmen served a demand notice on the managements to introduce gratuity scheme some times before the 22nd of June, 1965 and they desired to have a reference on the point. The Government then refused to make the reference by their letter Ex.-R-1. With regard this particular demand the Government in their aforesaid letter said as under:—

"According to the provisions of settlement dated 17th April, 1957 the union is debarred to raise any demand except that of individual workmen. In view of the same, the demand for gratuity has been rejected."

The workmen later gave another demand notice on 17th December, 1966 and the present reference has been made by the Government on the basis of the said notice. It appears that the Government kept the matter pending till 1st April, 1967 when the period of 10 years as mentioned in clause 9 of Ex. R-3 expired and made this reference after the said period. Mr. M.L. Saini representative of the management has relied on a judgement of the Punjab High Court in Gondhara Trpt., Co. *vs.* State of Punjab A.I.R. 1966 P. 354. The said ruling has absolutely no bearing on the present case in as much as the demand notice in this case was given on 17th December, 1966 and the Government took only one decision after that and this was to make the present reference. Moreover when the previous order of the Government was passed at a time when the 10 years period from 1st April, 1957 had not expired. The said period of 10 years have now expired the management cannot obviously raise a plea that the workmen are not competent even after the expiry of that period to raise any demand. The Government was in my opinion perfectly justified in making the reference in question and the reference is therefore, valid. I may add that clauses 7 and 9 do not in my opinion settle any of the disputes. This point is covered by the ruling of their Lordships of the Supreme Court in T.I.T. Bhiwani *Vs.* their workmen 1965-LLj-2P-149 in which a withdrawal of a demand was held not to be a settlement of the said demand. Even assuming for the sake of argument that clauses 7 and 9 amounted to a settlement the said settlement by itself provided that the workmen shall not make any fresh demand for a period of 10 years from 1st April, 1957 and the period of 10 years expired on 31st March, 1967. The reference in this case was made four months after this period, i.e., on 3rd August, 1967 and is, therefore, unassailable. The objections of the management appear to me to be wholly frivolous and seem to have been made merely with a view to delay the proceedings of the case. Issue No. 1 is decided against the management.

No order as to costs.

Dated the 10th November, 1967.

K.L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

H. S. ACHREJA, Secy.

LABOUR AND EMPLOYMENT DEPARTMENTS

The 17th October, 1969

No. 6496-ASO (E)-Lab-69/25246.—The Governor of Haryana is pleased to grant 177 days leave preparatory to retirement from the 19th September, 1969 to 14th March, 1970 to Shri D. N. Mehta, State Vocational Guidance/Employment Liaison Officer, Haryana who is due for retirement on superannuation on the 15th March, 1970 (F. N)

H. S. ACHREJA, Secy.